United Nations CEDAW/C/COK/Q/2-3/Add.1

Convention on the Elimination of All Forms of Discrimination against Women

Distr.: General
7 March 2018

Original: English
English, French and Spanish only

Committee on the Elimination of Discrimination against Women
Seventieth session
2–20 July 2018
Item 4 of the provisional agenda
Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women

List of issues and questions in relation to the combined second and third periodic reports of the Cook Islands

Addendum

Replies of the Cook Islands*

[Date received: 20 February 2018]

* The present document is being issued without formal editing.

18-03516 (E) 160318

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Constitutional and legislative framework

1. The Constitution of the Cook Islands is the supreme law, Article 64 (1) provides Cook Islands fundamental human rights and freedoms without discrimination on the grounds of sex. In regards to specific references to the incorporation of the CEDAW convention and the definition of discrimination, these are highlighted in the following sector-specific legislations.

2. The Employment Relations Act 2012, Part 5, section 53 states that an *"Employer must not discriminate (1) An employer, or representative of an employer, must not take adverse action against an employee or a prospective employee directly or indirectly because of a prohibited ground of discrimination mentioned in section 55". Section 55 alludes that the prohibited grounds of discrimination are:*

(a) Race, ethnic origin, skin colour or appearance;

(b) National origin;

(c) Opinion and belief;

(d) Religion;

(e) Gender or sexual preference;

(f) Disability;

(g) Age;

(h) Health status;

(i) Maternity.

In addition, Part 1, Section 5 (g) states "to promote observance in the Cook Islands of the principles underlying international agreements too which the Cook Islands is a party...".

3. The enactment of the Family Protection and Support Act 2017 by Parliament was a positive change for the country. Part 1, section 3 reconfirms the Cook Islands' commitment to its international obligations, stating, *"ensure that the matters to which this Act applies are consistent with the Cook Islands' commitment to Christian principles, and to human rights and gender equality, particularly through its commitments to:*

(a) The United Nations Convention on the Elimination of All Forms of Discrimination against Women;

(b) The United Nations Convention on the Rights of the Child; and

(c) The United Nations Convention on the Rights of Persons with Disabilities.".

4. The Education Act 2012 states *"that everyone involved in the education system is treated with dignity, respect, and understanding, in a way that is consistent with:*

(a) The fundamental human rights and freedoms in Articles 64 and 65 of the Constitution of the Cook Islands;

(b) The Convention of the Rights of the child;

(c) The Convention on the Elimination of All Forms of Discrimination Against Women; and

(d) The Convention on the Rights of Persons with Disability.".

5. The Disability Act 2008 specifically states that discrimination on the basis of the rights of persons with a disability is assured. The further defining of the prohibition against discrimination and unlawful discrimination is also highlighted, it states that *"In particular, and without derogating from the foregoing, no person shall discriminate against a person with a disability on any of the following grounds:*

> *(g) The personal status of the person with a disability, which shall include the age, marital or relationship status, gender, or sexual orientation of the person with a disability or whether the person with a disability has responsibilities for others including children or other dependents; or".*

6. The CEDAW Law Reform programme continues to work on other domestic legislations until the full incorporation of the Convention in the domestic law system. At present, the review of the Crimes Act 1969 — Crimes Amendment Bill 2017, is with the Parliament Select Committee, conducting Island and community consultations on the bill and it is envisaged to be tabled in Parliament by the end of 2018 for enactment. Other legislations identified for review as per the programme includes the Marriage Act 1973, to raise the minimum age of marriage for females from 16 years to 18 years of age with full consent, the Island Administration Act 2012–13, and the Matrimonial Property Act 1991–92, to incorporate the principle of the Convention.

Access to Justice

7. At present, the women-focused legal aid programme is limited to providing legal advice and advocacy to victims — women and children of domestic violence, it does not extend to claims of discrimination or the enforcing of rights to equality such as employment and harassment issues. To date, no case in court proceedings have occurred in which the Convention has been invoked by individuals or applied directly or referred to in the Cook Islands.

8. The Ministry of Internal Affairs is considering to include in the women-focused legal aid programme claims of discrimination or the enforcing of rights to equality such as employment and harassment issues.

National machinery for the advancement of women

9. The Ministry of Internal Affairs restructure in 2016 note that the Division for Gender and Development has merged into a new Output called the 'Social Policy and Services Division'. The merger therefore entails that the Social Policy and Services Division is the entity to include a gender perspective for policies and programmes in the Cook Islands. The key functions for the new division is to provide:

- Governance/Oversight of policy effectiveness in improving whole-of-government gender, disabilities, youth and child outcomes; and
- Ongoing Service delivery of care and protection services for children and youth justice.

10. There are two (2) staffing positions directly responsible for the implementation of the National Gender Equality and Women's Empowerment Policy (2011–2016) — the Senior Adviser for Gender Development and the Gender Programme and Research Officer; the Head of the Social Policy and Services Division provides monitoring support to the Gender Development Programme.

11. The Ministry of Internal Affairs is currently conducting an assessment to determine the effectiveness of both the GEWE as well as the role and functions of the National Steering Committee.

12. The Office of the Ombudsman is mandated in their Ombudsman Act 1984 under sections 11(3) and 14, to exercise discretion as to the complaint that will go to investigation or about which an investigation will be refused. There is no express provision for investigation of sex-based discrimination except that which is provided in Article 64 of the Constitution. In summary the Act does not prohibit the investigation of sex-based discrimination.

13. A scoping study conducted in 2017 by a collaborated team of representatives from the Asia Pacific Forum for National Human Rights Institutions (APF), Pacific Community-Regional Rights Resource Team (SPC-RRRT), UNDP and OHCHR reported to the Cook Islands Government and made recommendations towards an *enhanced Ombudsman-NHRI model with both a good governance and human rights mandate as the best option for a NHRI in the Cook Islands.*

Temporary special measures

14. To date, there has been no systematic progress made to establish temporary special measures (TSM), it remains a subject of debate. With the national elections coming up at the end of 2018, the intent is to continue to advocate and provide information on TSM's and integrate at the two major Political Party Manifesto or policy.

Stereotypes

15. The 16-day activism campaign against gender-based violence coordinated by the Gender Development Office in partnership with key Government agencies and Civil Society is a sustained annual awareness program which aims to end domestic violence including counteract stereotypical attitudes that discriminates against women. In addition, the Health and Wellbeing curriculum implemented by schools raises the awareness of stereotyping amongst boys and girls from junior level to senior level. This is an ongoing program delivered by the Ministry of Education in partnership with key stakeholders including civil society.

16. There is no current strategic system in place to address gender stereotypes in the media.

17. Efforts undertaken by the Cook Islands to promote the engagement of men and boys in raising awareness on the extent of violence against women include the Cook Islands Police Services organisation and implementation of the 'white-ribbon day' initiative, the Cook Islands Football Association 'Just Play' initiative utilizes sports as an avenue to engage boys and girls, and community-based men's groups such as 'Te Rotaianga' — Men's counselling services.

Gender-based Violence against women

18. The **Family Protection and Support Act 2017** (FPS) enacted came in effect on 1 December 2017. It is a comprehensive piece of legislation which addresses no fault divorce, domestic and child support, parenting arrangements, care and protection of children and domestic violence in Part 6. The purposes of Part 6 of the FPS Act are to ensure the protection of victims of domestic violence, to recognize that domestic violence in all its forms is unacceptable behavior and to prevent domestic violence. Domestic violence is defined to include economic abuse, emotional, verbal and

psychological abuse and stalking. There is a regime of civil procedures for the making of protection orders, police safety orders, provisions for the service of protection orders to ensure the continued safety of victims, authorising the occupation of the family home and compensation for injuries losses and expenses. If the respondent challenges the making of the orders there is provision for evidence to be taken from the protected person at the discretion of the Court in writing, orally behind a screen, or from a different locality using technology. The Police have statutory obligations under Part 6. Applicants under Part 6 are exempt from payment of fees for proceedings. Parliament passed the Harassment Act 2017 to provide protection against violence and abuse when there is no domestic relationship.

19. The Family Protection and Support Act 2017 (Rules and Regulations) provides user friendly forms so that applicants in the outer islands in particular are able to make applications with the assistance of the Court Registrar in those islands due to the lack of legal advisers. It also enables applicants in Rarotonga to make applications without having to go to a lawyer and for applications to be dealt with by Justices of the Peace.

Crimes Amendment Bill 2017 (Bill)

20. Part 6 of the Bill provides for Crimes against the person and is non-gender specific. Subpart 2 partially decriminalizes abortion to enable abortion in certain circumstances by a medical practitioner. In Subpart 8, stalking is an offence and it may be possible to prosecute a person under clause 100(3) (k) who sexually harasses a person. Subpart 9 addresses abduction and kidnapping and specifically abduction for marriage or sexual connection. Subpart 10 deals with female genital mutilation, which although not a cultural norm in the Cook Islands, the community is concerned that the Cook Islands does not become a safe haven for people for whom such activity is acceptable.

21. Part 6, Subpart 11 (Sexual offences) provides for the offence of sexual violation which means "rape" or "unlawful sexual connection". Rape is limited to the sexual connection of a person's penis into the genitalia of a female without consent or an honest and reasonable belief in consent of the female person. Unlawful sexual connection is defined as sexual connection other than rape without the consent or an honest and reasonable belief in the consent of the person involved in the sexual connection. The rape by a husband of his wife is criminalized.

22. The Bill criminalizes stalking and grooming a person under 16 years old and extends to unlawful sexual activity by a Cook Islander or Cook Islands resident outside the Cook Islands with a person under 16 years old.

23. The establishment of the Sexual and Gender-based Violence against Women's (SGBV) working group and the agreed terms of reference for the group is a strategy that is in place. The working group consists of Government representatives from Ministry of Health, Education, Internal Affairs, Cook Islands Police and Civil Society Service Providers such as Cook Islands Red Cross, Punanga Tauturu Inc., private counselling programmes, church groups, youth groups, and women organisations. The objectives for the working group are as follows:

(a) To provide a national platform to identify issues and barriers faced in prevention and response to SGBV, to advocate for solutions to address identified gaps, and to provide advice on community needs;

(b) To coordinate the SGBV approach of Health, Psychosocial, Legal, Protection and faith-based services to ensure a functioning and up-to-date national

referral system (for survivors of SGBV including men and children) is functioning at all times (including in disasters);

(c) To help agencies strengthen disaggregated data collection on SGBV prevalence and response;

(d) To provide technical assistance/training on gender equality, social inclusion and SGBV to the wider public;

(e) To assist research needed for effective SGBV response (such as evidence on economic costs of SGBV, on the long-term impact on a survivor's health);

(f) To publicly disseminate information and support referral pathways and prevention campaigns on SGBV (including to Pa Enua) and to contribute to the Internal Affairs report to Cabinet and Parliament on status of implementation of the National Policy on Gender Equality and Women's Empowerment.

24. The outcomes of the Gender Equality and Women's Empowerment project includes the establishment of a referral mechanism between service providers which includes Punanga Tauturu Inc., Women's counselling centre, the Ministry of Health, Cook Islands Police Service; the domestic violence legal aid programme; and an advocacy programme to raise awareness on the Outer Islands 'Pa Enua'.

25. The extent of all forms of cases of violence perpetrated against women in the Cook Islands since 2007 has shown that domestic violence cases are the most reported form of cases of violence against women. Data collected during the period 2007 to 2014 shows that approximately 72% of reported cases to the Cook Islands Police Services were of domestic disputes. The increase in reported cases is attributed to the sustained awareness program promoting 'break the silence and end violence now' amongst other strategic programs.

Trafficking and exploitation of prostitution

26. The Crimes Amendment Bill 2017, Part 6, Subpart 14 on Prostitution and compelling prostitution provides that soliciting, procuring, maintaining a brothel, receiving proceeds and compelling prostitution and compelling giving earnings from prostitution are all offences. Part 17 addresses people smuggling and human trafficking conduct, subpart 4 on slavery and restricting prohibited employees, makes it an offence to deal with a person as a commodity and to restrict a person who is not entitled to work in the Cook Islands but is employed and prevented by the employer from leaving the Cook Islands.

27. There are no available exit programs for women in prostitution or any awareness-raising measure to eliminate the demand and the objectification of women and girls, given that under the current Crimes Act 1969 prostitution is an offense.

28. The 2016 Pacific multi-country mapping and behavioural study undertaken by the United Nations Development Programme (UNDP), the United Nations Children's Fund (UNICEF) and the University of New South Wales (UNSW) in collaboration with the Ministry of Health a dedicated section on 'Female Sex Workers' was studied. As a result it was reported that the Cook Islands situation which because of its legislative restrictions on 'sex work' and that of 'sex workers' remains hidden.

29. There is no official information available on sex tourism and the phenomenon of trafficking, it is an area the Cook Islands need to conduct a study to determine its situations.

Participation in political and public life

30. There has been no legislation and policy measures enacted to introduce a system of quota that would aim at reaching a minimum 30 per cent representation of women in Parliament and in Local Government, this remains a subject of debate.

Education

31. The Education system in the Cook Islands promotes Inclusive Education, this entails that the opportunities are equal for boys and girls and that the focus is on meeting the needs of the learner. Current statistical reports highlights that in secondary school Years 12 and 13 there is higher proportion of girls choosing to stay in school longer than boys.

32. Measures taken by the Ministry of Education to retain girls[1] includes a focus on providing secondary education that engages young people and retains them in schooling; a holistic approach to senior retention; monitoring of retention rates for senior secondary; implementing legislative[2] changes in the minimum leaving age from 15 years to 16 years, and the implementation of the exemption system which permits students under the age of 16 years to leave school early should they take up apprenticeships or enrolment in the *'Uki Tumanava'*[3] programme with the Cook Islands Tourism and Training Institute (CITTI).

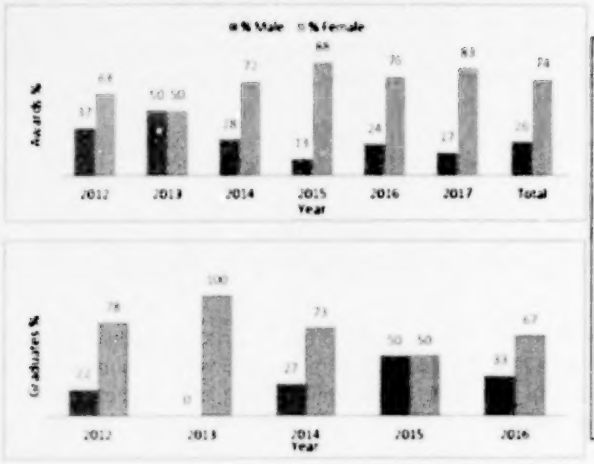
33. Secondary schools are broadening their scope of programmes, academy programmes are currently being offered for building, hospitality and horticulture. In addition, schools are also utilizing CITTI to deliver vocational programmes in Hospitality and Cookery, enrolments in these courses are open to both girls and boys. The Cook Islands Tertiary Study Support Programme ('Te Reinga Akataunga'anga') provides scholarship and study support options for both domestic and international studies. Science, Technology, Engineering and Mathematics (STEM) related courses are highly supported by the Tertiary Education Committee and the Ministry of Education continues to host the 'Women in Sciences' programme, an annual event promoting Cook Islands women in science related roles.

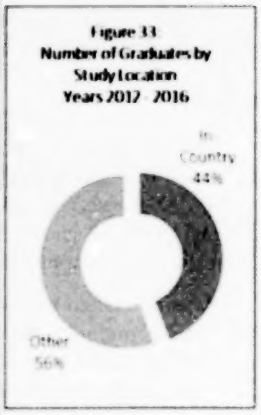
34. During the years of 2012 to 2016 the Ministry of Education statistical report 2016 shows that more females receive scholarships which eventually leads to more females graduating each year, the following figure depicts the scholarship awards and graduates by gender and study location.

[1] Rarotonga and in the Outer Islands – the system is general in its approach meaning the focus is on both girls and boys, however, sex-disaggregated data system are in place for reporting purposes.

[2] Cook Islands Education Act 2012.

[3] The 'Uki Tumanava' phrase refers to the name of a programme in Cook Islands Maori for those students who wish to be exempted from school under the age of 16 years.





35. The Health and Physical Wellbeing curriculum is an essential learning area of the Cook Islands Curriculum Framework and is taught in all our schools — private and public. Sexual and reproductive health and rights is taught from Primary to Secondary level with specific achievement objectives and learning outcomes. Periodic monitoring of the implementation of the curriculum is conducted through Quality Assurance visits with schools.

36. Data on the drop-out rates of girls — owing to pregnancy is not collected as part of the Education Statistical Report given its low numbers, however, the Education Act 2012, Subpart 4 explains that *'the Secretary must not exempt a parent or guardian because the child concerned is pregnant'*. Pastoral care and wellbeing systems in our schools has improved to support girls who become pregnant whilst attending school to know that continuing their education is important and that they can return back to classes anytime.

Employment

37. The Ministry of Internal Affairs-Labour Division conducts periodic inspections that help to facilitate the .esolution of complaints on a general basis, to date no complaints or disputes have been received based on sex-based discrimination. A Labour dispute and resolution system is currently being developed and it is at the planning stages.

38. The International Labour Organisation (ILO) review conducted in the Cook Islands in 2017, recommended that legislation be reviewed to reflect an increase in paid maternity leave from 6 to 12 weeks. The review process of the Employment Relations Act 2012 will consider the recommendation.

39. Child-care facilities in the Cook Islands are privately owned establishments, the regulatory system is ad hoc in the context that the Ministry of Internal Affairs-Labour Division conducts inspections focusing on the employer and employee relations and the Ministry of Health for safety and care adherence.

40. The measures taken to encourage women's participation in occupational areas of the formal labour market that have traditionally been occupied by men has been

through the review of recruitment policies that ensure that the opportunity for employment in these sectors does not discriminate by gender.

Health

41. In the Crimes Bill (Amendments to Crimes Act 1969) Subpart 2 of Part 6, abortion is decriminalized in the context of a lawful medical procedure, clause 72(1) of the Bill further defines it. Clause 72(2) provides that the age of the pregnant person and whether the pregnancy is a result of a sexual offence may be taken into account when determining whether the pregnancy would be a serious danger to the life, or physical or mental health of the pregnant person. It will remain an offence to carry out or to procure an abortion that is not a lawful medical procedure.

42. Protocols are in place to ensure all women who meet the legal criteria for an abortion are able to access the service provided by the Ministry of Health.

43. Civil society in collaborations with key Government Ministries such as the Cook Islands Family Welfare Association (CIFWA) in partnership with the Ministry of Health has conducted public consultations to support the submission to the process of amendments to the Crimes Amendment Bill regarding the decriminalization of abortion.

44. There exists no restriction or prohibition by policy or legislation for the provision of contraception to the Cook Islands population, currently there is a process that allows for the access of contraceptive products for girls below the age of 16, with parental/care-giver/ guardian consent.

45. The Cook Islands Integrated National Strategic Plan for Sexual and Reproductive Health, identified programs and sustained-awareness activities which include to ensure the delivery of high-quality age, gender and culturally appropriate risk prevention education; upskilling of health professionals, education of political and traditional leaders, and accessibility and availability of testing as means to combat issues including early pregnancies and sexually transmitted infections (STIs).

46. The Cook Islands Mental Health and Well-being Policy 2015 is yet to be reviewed, however the principles of the CEDAW Convention is incorporated under the Human Rights section of the overarching principles of the Policy which provides guidance into its implementation.

Rural Women

47. The Gender Equality and Empowerment project provided leadership training workshop programs on each of the Outer Islands between 2013 and 2016, organized by the Cook Islands National Council of Women (CINCW). Evidence as a result of the effectiveness of the project is seen in programs and activities established and in place. Such as small income generating activities initiatives on the island of Manihiki for women art and crafts, baskets and hats weavers, and pearl family farmers. Leadership and training workshops conducted on the islands of Mangaia, Mitiaro and Mauke, which profiled women and young women and groomed as potential candidates at the island level leadership roles. Trade Market programmes coordinated on the islands of Aitutaki, Manihiki and on Rarotonga which includes women and girls with disability. Institutionalized in-country short-term course in Certificate on First Line Management with Cook Islands Trade Tertiary Instituted and conducted on the islands of Mangaia, Aitutaki and Rarotonga.

48. The provisions in the Family Protection and Support Act (FPS) 2017 which makes access to justice and protection from gender-based violence easier for women in the outer islands are the promulgation of forms which have been drafted so that applicants may make their applications without seeking advice from a lawyer. Under section 98 of the FPS Act, applications for protection orders may be made orally in Maori or English, by post, email or text or other medium. The Court is responsible if necessary to reduce the application to writing.

49. Section 108 of the FPS Act provides that an outer island constable may make a police safety order without the authority of a sergeant but must as soon as practicable inform the sergeant in Rarotonga in writing of the action taken.

Women with Disabilities

50. The Cook Islands Disability Inclusive Development Policy (2014–2019) highlights the various mechanisms that is intended to remove all barriers for women with disabilities to ensure the Disability Act 2008 is adhered to, stating that *"Every person with a disability shall be entitled to the same rights and privileges as all other persons, and in particular, those rights granted by the Constitution of the Cook Islands." These mechanisms include:*

(a) Establish a support group for women with disability;

(b) Work with Gender and Development Division of the Ministry of Internal Affairs and Ministry of Health on advocating for reproductive rights of women with disability, and

(c) Advocate for women with disability to be an agenda item for the biennial National Women's Conference.".

51. The National Coordinating Mechanism (Stakeholders of Service providers meeting on a monthly basis) provides an opportunity to highlight the capacity and capability issues of Service providers in the delivery of services for persons with disabilities, however there are limitations such as the inability to professionally classify disabilities by medical professionals.

52. Women with disabilities have access to protection from gender-based violence under the Family Protection and Support Act 2017 (FPS), it states that Protection Orders can be made on an oral application reduced to writing by the Court and by a person on behalf of the disabled person under sections 97 and 98 of the FPS Act 2017.

53. The Policy, under Priority Area 9 alludes to work conducted in partnership between the Cook Islands Women and Girls with Disability Organisation (CIWGDO) and the Social Policy and Services Division of the Ministry of Internal Affairs, include the development and launch of a 5-year Strategic Plan that aims to advance the resource the development of WGD and service providers including Disability Centres in the Outer Islands.

Disaster risk reduction and climate change

54. The 2016–2020 Joint National Action Plan II (JNAP II) is a collaborative and sectoral plan that integrates climate change and disaster risk management in the Cook Islands. The guiding principles of the plan highlights the alignment to the National Sustainable Develop Plan (NSDP) and Target 13.3 of the Sustainable Development Goals. Participation of women and girls in policy and program at all level of development according to the JNAP II is encouraged, including representatives from

vulnerable groups and the Outer Islands-Pa Enua as the risks is greater for these small islands given their vulnerability.

55. The Cook Islands has adopted the Sendai Framework for Disaster Risk Reduction and the United Nations Framework on Climate Change Conventions (UNFCCC). On 1 September 2016 the Cook Islands deposited its instrument of ratification of the Paris Agreement with the United Nations; numerous other international and regional obligations including the Kyoto Protocol, the Framework for Resilience Resilient Development Disaster Risk Management and Climate Change Adaptation and Mitigation, which is highlighted and incorporated into the II JNAP.

56. The employment of female in the engineering, scientific and technology-related occupations in addressing the effects of climate change is encouraged and currently female are employed in these positions.

57. The recognition and linkage of the International agreements and Frameworks (referred to in 14.2) into National Plan development processes ensures that women and girls are not subjected to discrimination, are protected against gender-based violence in evacuation centres and adequately represented in disaster preparedness and response structures.

58. Currently there are no structured swimming and climbing programs for skills development purposes from early childhood. Intermittent activities and programs within the Education system and Community or Sports groups is still in place.

59. Strategy 9 — Human Health and Welfare of the II JNAP outlines the need for key agencies and stakeholders to develop and resource a gender-responsive contingency plan to maintain emergency medical supplies, including the special needs of vulnerable groups. The development of the contingency plan is in progress.

Marriage and family relations

60. The Marriage Amendment Bill 2017 is currently being reviewed it is envisage to be completed by the end of 2018.

61. The Matrimonial Property Act 1991–92 has not been amended to recognize de facto relationships and the division of property upon the conclusion of a de facto relationship.

The Family Protection and Support Act 2017 (FPS) recognizes de facto relationships and provides for domestic and child support and child-bearing expenses in Part 3. To ensure enforcement across borders of orders made under the FPS Act it also provides for the registration overseas of orders made in the High Court of the Cook Islands and for the registration in that Court of orders made in overseas jurisdictions.